

April 30, 1996

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON

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DECISION ON APPEAL OF CONDITIONS OF SHORT PLAT APPROVAL

SUBJECT: Department of Development and Environmental Services File No. L95S0029

CALDWELL
Short Plat Appeal

Applicant: Donald Caldwell
25418 NE 8th Street
Redmond, Washington 98053

Appellants: Bert & Vivian Goff
1824 - 220th Avenue SE
Issaquah, Washington 98029

Property Located: On the west side of 220th Avenue Southeast, approximately 225
feet south of Southeast 16th Place in King County,
Washington

SUMMARY OF RECOMMENDATIONS:

Division's Preliminary:	Approve subject to conditions
Division's Final:	Approve subject to conditions (modified)
Examiner:	Grant appeal in part and deny in part, as described further below

PRELIMINARY REPORT:

The Land Use Services Division's Preliminary Report on Item No. L95S0029 was received by the Examiner on April 12, 1996.

PUBLIC HEARING:

After reviewing the Land Use Services Division's Report and examining available information on file with the appeal, the Examiner conducted a public hearing on the subject as follows:

The hearing on the short plat appeal of Donald Caldwell was opened by the Examiner at 9:20 a.m., April 26, 1996, in Room No. 1, Department of Development and Environmental Services, 3600 - 136th Place Southeast, Bellevue, Washington, and closed at 11:30 a.m. Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the Office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. General Information:

Applicant: Donald Caldwell
25418 Northeast 8th Street
Redmond, Washington 98053

Appellants: Bert & Vivian Goff
1824 - 220th Avenue Southeast
Issaquah, Washington 98029

Agents: Baima & Holmberg
100 Front Street South
Issaquah, Washington 98027-3817

STR: SW 4-24-6

Location: Approximately 300 feet south of the northeast corner of
Southeast 16th Place and 220th Avenue Southeast

Zoning: R4-P

Acreage: 1.75

Number of Lots: 4

Proposed Use: Single-family residential

Sewage Disposal: Individual on-site sewage systems

Water Supply: Public

2. The King County Land Use Services Division of DDES issued preliminary plat approval, subject to conditions, for a four lot short subdivision (File No. L95S0029), on February 9, 1996.
3. A timely appeal was filed regarding this project by Bert and Vivian Goff on February 20, 1996. The appellants' notice of appeal letter also asserted that they represented "additional parties and interested persons", although no other persons were signatories to the appeal letter. Mr. Charles Hoins did accompany Mr. and Mrs. Goff at the appeal hearing discussed below.
4. On February 25, 1996, the appellants submitted their statement of appeal. Concerns raised in the appeal letter included:
 - A. Size of the cul-de-sac required at the end of the public right-of-way which is to be opened and improved for access to the lots in the subject short plat;
 - B. Whether the road construction is subject to county surface water management requirements;
 - C. Preservation of privacy for appellants and prevention of access to the private driveway, used by the appellants and identified as 220th Avenue Southeast, which lies just to the east of the subject property;
 - D. The street name to be given to the public road being opened for purposes of the subject short plat, which appellants would prefer be differentiated from their private driveway;
 - E. Impacts to a wetland lying southeast of the subject property have not been evaluated;
 - F. There are no burning or work hour restrictions included in the preliminary approval;
 - G. There are no clearing restrictions included in the preliminary approval.
5. Following a pre-hearing conference conducted on March 26, 1996, Examiner James O'Connor directed that the issues to be discussed at the appeal hearing would be limited to:
 - "A. The size, surface, and location of the proposed cul-de-sac, including possible alternatives to reduce impacts on surface water and esthetics.
 - B. The need for a fence or alternative provision to maintain the privacy of adjacent properties and discourage trespass upon the adjacent private property, including the private road designated 220th Avenue Southeast.
 - C. The appropriate street designation of the site access road, to avoid unnecessary confusion of addresses with properties currently addressed as 220th Avenue South-east.
 - D. Whether special circumstances justify imposition of limits on construction noise pursuant to the State Environmental Policy Act in addition to the limits stated in Title 12, King County Code.
 - E. Whether special circumstances call for imposition of conditions pursuant to the State Environmental Policy Act to control clearing and tree removal on the subject property."
6. The pre-hearing order also stipulated that "The conditions of preliminary approval will be

revised to specifically state that all proposed road construction, including construction on county right of way, shall meet the requirements of the King County Surface Water Design Manual, unless variances are granted in accordance with applicable provisions of the King County code."

7. A public hearing was conducted on the appeal on April 26, 1996, as stated above. At that time, Land Use Services Division staff stipulated that the street to serve the subject short plat would be designated 219th Place at the time of recording, which would address Mr. O'Connor's item C.
8. In discussing the issue of the cul-de-sac during the hearing, it became evident that the location of the cul-de-sac, as well as its size, was of concern. The staff indicated that the cul-de-sac could be located at the end of the private tract intended to serve the two most western lots. At this location, the cul-de-sac would have less impact on the Goff and Hoins properties, as it would line up with their common boundary. This location would also require less paving overall, than if it were located at the extreme south end of the county right-of-way adjacent to the site.
9. As to the size of the cul-de-sac, while the appellants find this undesirable, there was no evidence offered to suggest that a smaller radius would meet fire department needs. Appellants during the hearing suggested that they might be able to allow access to lots over their private driveway for fire protection purposes, but it was not clear whether such an arrangement could adequately substitute for a cul-de-sac.
10. With regard to the request of the applicant that a fence be located along the east edge of the county right-of-way, the following points were made by various parties:

By staff: That no structure or obstruction could be built on county right-of-way or within 10 feet of the right-of-way and that there are no county requirements to provide fences between single family residential developments.

By appellants: That they had problems with trespass by agents of the plat applicant trying to access the subject property; that there is a vegetative strip between the private driveway and the county right-of-way, over which the applicant's agents trespassed; that they had also had problems with strangers driving through on their private road, and delivery trucks cutting through their property; that appellants' private road was not on the western edge of their property, but rather "set-in" somewhat.

By the applicant: That the private road was open to vehicles on both ends (Southeast 16th and Southeast 20th Streets); that a barricade had existed at the east end of Southeast 16th Street at one time, but it had been removed; that appellant's private road does lie approximately 30 feet east of the common boundary, providing a buffer between the county right-of-way and applicant's private road; that an offer to provide a split-rail fence had been rejected; and that there are no county requirements for such fencing.
11. With regard to construction noise, appellants objected generally to the hours allowed by county noise ordinances, but did not cite any special circumstances that would justify restricting the hours of construction to control such noise.
12. With regard to clearing of the lots, staff indicated that there are no applicable county restrictions. Appellant argued that clearing should only be that necessary to accommodate the homes and on-site sewage disposal. The applicant argued that the existing pattern in the neighborhood is varied, with many lots totally or substantially cleared.

CONCLUSIONS:

1. With regard to the location of the cul-de-sac, all parties, as well as the public, would benefit from assuring that it is located at the eastern end of the access tract for the two western-most lots.
2. With regard to the size of the cul-de-sac, no meaningful alternatives were presented. Should the appellants be able to satisfy the Fire Marshall that access over their private road would be preferable to the construction of the cul-de-sac, the applicant and Division should be free to pursue that possibility, but it should not be required.
3. With regard to the fencing, the examiner notes that the appellants, while expressing concern about random trespass by vehicles, pedestrians and bicyclists over their private road, have not taken action to prevent that vehicular access by installing gates on either end of their road. Most complaints are related to vehicles rather than pedestrians. In fact, they indicated that the owners did not want such a barrier constructed. Constructing a fence between the subject property and the appellants would, therefore, not effectively prevent such trespass by vehicles, which can continue to occur from the existing residents on SE 16th Street as long as the road is left open.

The 30 foot buffer strip that now exists will clearly separate the two roads so that cars from the new lots are unlikely to travel across the strip to reach the private driveway (220th Avenue Southeast).

4. With regard to the noise concern, while the county-stipulated hours may seem excessive, during the summer construction season especially these longer hours may expedite the construction of the homes on these lots and actually reduce the overall impact of the construction activity. In a small subdivision such as this, no extraordinary circumstances were asserted to justify modifying the hours of construction allowed pursuant to the county's noise standards.
5. With regard to limitations on clearing, the examiner notes that these lots are less than 1/2 acre in size, and require on-site sewage disposal systems. Most of the lot area will be required for the construction of the home and the on-site sewage disposal system. The actual size and design of the homes is unknown at this time, and there is therefore insufficient information to suggest an appropriate clearing limitation. But more importantly, the county simply has no such standard in effect, and no substantial basis for such a restriction has been offered.

DECISION:

Grant the appeal and modify the conditions of approval with regard to the following items, and deny the appeal on all other matters:

1. The conditions of preliminary approval shall be revised to specifically state that all proposed road construction, including construction on county right of way, shall meet the requirements of the King County Surface Water Design Manual, unless variances are granted in accordance with applicable provisions of the King County code.
2. The cul-de-sac required pursuant to condition 6G shall be located at the eastern end of the access tract for the two most western lots. The requirement for a cul-de-sac may be waived by the Division if, prior to final approval, the Fire Marshall stipulates that access from 220th Ave SE is preferable for fire protection purposes.
3. The public street being developed to access these lots shall be addressed, as stipulated by the Addressing Section, as 219th Pl SE, subject to its possible future revision to 220th Ave SE should the existing private driveway known as 220th Ave SE be replaced by a publicly dedicated road that completes the other half of the half street being provided pursuant to the present application.

The appeal by the applicant of the conditions of short plat approval is GRANTED in part, and DENIED in part.

ORDERED this 30th day of April, 1996.

Michele McFadden
King County Hearing Examiner
Pro Tem

TRANSMITTED this 30th day of April, 1996, to the following parties and interested persons:

Baima & Holmberg
100 Front Street S
Issaquah, WA 98027

Linda Brandon
21916 SE 16th Place
Issaquah, WA 98029

Donald Caldwell
25418 NE 8th Street
Redmond, WA 98053

Nora Caldwell
21915 SE 16th Place
Issaquah, WA 98027

David P. Carlson
1605 - 218th Court SE

Dale/Helen Christofferson
1910 - 220th Avenue SE

Issaquah, WA 98027

Issaquah, WA 98029

Ryan M. Dudley
21926 SE 16th Place
Issaquah, WA 98029

Roger K. Giesecke
22004 SE 20th Street
Issaquah, WA 98029

Bert/Vivian Goff
1824 - 220th Avenue SE
Issaquah, WA 98029

Charles K. Hoins
2809 - 204th Avenue SE
Issaquah, WA 98029

Steven/Janet Okerlund
1920 - 218th Lane SE
Issaquah, WA 98029

Mary Piggott
22104 SE 20th Street
Issaquah, WA 98029

Brian Lawler, Attorney At Law
1301 Fifth Avenue #3410
Seattle, WA 98101

Dave Baugh, DDES/LUSD, Site Plan Review
Jeffrey Bunnell, DDES/LUSD, Engineering Review Services
M. Manion, DDES/LUSD, Site Plan Review
Jim Chan, DDES/LUSD, Engineering Review Services
Lisa Pringle, DDES/LUSD, Site Plan Review
David Sandstrom, DDES/LUSD, Site Plan Review

NOTICE OF RIGHT TO APPEAL
AND ADDITIONAL ACTION REQUIRED

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding short plat appeals. The Examiner's decision shall be final and conclusive unless a person with standing commences a proceeding for review pursuant to the Land Use Petition Act by filing a petition in the Superior Court for King County and serving all necessary parties within twenty-one (21) days of the issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE APRIL 26, 1996, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT
AND ENVIRONMENTAL SERVICES FILE NO. L95S0029 - CALDWELL SHORT PLAT:

Michele McFadden was the Hearing Examiner in this matter. Participating in the hearing were Linda Brandon, Donald Caldwell, Bert & Vivian Goff, Charles Hoins, Brian Lawler, Dave Baugh, Jeff Bunnell, Jim Chan, and Dave Sandstrom.

The following exhibits were offered and entered into the record:

Exhibit No. 1	Department of Development and Environmental Services File No. L95S0029/Caldwell
Exhibit No. 2	Department of Development and Environmental Services Preliminary report, dated April 26, 1996
Exhibit No. 3	Application/site plan, dated May 24, 1995
Exhibit No. 4	Assessor's (4) maps, NW4-24-6, NE4-24-6, SW4-24-6, SE4-24-6
Exhibit No. 5	Preliminary approval report, dated February 9, 1996
Exhibit No. 6	Appeal letter, dated February 19, 1996
Exhibit No. 7	Statement of appeal, dated February 25, 1996
Exhibit No. 8	Memo, dated March 28, 1996, from Janise King, to Dave Baugh
Exhibit No. 9	Determination of nonsignificance for L95S0029 & L95S0030
Exhibit No. 10	Plat drawing showing property ownership of three lots, entered by Bert Goff
Exhibit No. 11	7 photographs of the short plat appeal area, identified and entered by Bert Goff, marked as 11A through G
Exhibit No. 12	Kroll map of area surrounding Caldwell short plat
Exhibit No. 13	Surveyor's map of Caldwell short plat, by Baima & Holmberg, dated March 4, 1996
Exhibit No. 14	Photographs and maps of lots in short plat development area, identified and

- entered by Donald Caldwell
- Exhibit No. 15 Additional photographs and maps of lots in short plat development area, identified and entered by Donald Caldwell
- Exhibit No. 16 2 drawings of proposed cul-de-sac area, identified and entered by Donald Caldwell
- Exhibit No. 17 Notebook, labeled Caldwell Short Plat, dated April 1996, containing maps and photographs of the subject short plat area, identified and entered by Donald Caldwell
- Exhibit No. 18 Zoning and Subdivision Examiner James N. O'Connor's Decision On Appeal for Caldwell Short Plat, dated November 27, 1985
- Exhibit No. 19 Shupe Holmberg's Declaration regarding Caldwell short plat, dated April 23, 1996

MM:var
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